



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ESTHER RODRIGUEZ,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Case No. EDCV 09-2259 RNB

ORDER AFFIRMING DECISION OF
COMMISSIONER

The Court now rules as follows with respect to the four disputed issues listed in the Joint Stipulation.¹

Disputed Issue Nos. 1 and 3 are both directed to the determination by the Administrative Law Judge ("ALJ") at Step Two of the Commissioner's sequential

¹ As the Court advised the parties in its Case Management Order, the decision in this case is being made on the basis of the pleadings, the administrative record ("AR"), and the Joint Stipulation ("Jt Stip") filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

1 evaluation process that plaintiff did not suffer from a severe mental impairment. To
2 the extent that plaintiff is contending that the ALJ erred in failing to properly consider
3 the June 5, 2007 opinion of plaintiff's treating psychiatrist that plaintiff's prognosis
4 was "guarded," the Court disagrees. Although plaintiff's treating psychiatrist listed
5 plaintiff's medications and provided a diagnosis, he did not purport to opine that
6 plaintiff had any functional limitations, let alone any functional limitations that
7 caused more than a minimal effect on plaintiff's mental ability to perform basic work
8 activities. (See AR 283.) The word "guarded" was provided in response to questions
9 on the form: "Can the patient's condition be expected to improve? If so, when do you
10 consider significant changes likely to occur?" (See id.) Thus, the treating
11 psychiatrist's opinion that plaintiff's prognosis was "guarded" at most signified his
12 belief that plaintiff's condition was not necessarily expected to improve.
13 Accordingly, even if the ALJ's stated reasons for according little weight to this
14 opinion were not legally sufficient, the ALJ's error was harmless because the opinion
15 was not probative of whether plaintiff suffered from a severe mental impairment. See
16 Stout v. Commissioner of Social Security, 454 F.3d 1050, 1055 (9th Cir. 2006) (an
17 ALJ's error is harmless where such error is inconsequential to the ultimate non-
18 disability determination); Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) ("A
19 decision of the ALJ will not be reversed for errors that are harmless."); Curry v.
20 Sullivan, 925 F.2d 1127, 1131 (9th Cir. 1991) (harmless error rule applies to review
21 of administrative decisions regarding disability).

22 To the extent that plaintiff is contending that the ALJ misrepresented the record
23 when he stated there were no mental status examinations or treatment notes to support
24 the June 5, 2007 opinion of plaintiff's treating psychiatrist that plaintiff's prognosis
25 was "guarded," the Court also disagrees. In support of this contention, plaintiff has
26 cited treatment notes by the treating psychiatrist dated October 4, 2007 (AR 363) and
27 April 24, 2008 (AR 358). However, the Court does not construe as opinions the
28 statements in the October 4, 2007 treatment notes to the effect that plaintiff had mood

1 swings and anger outbursts, and heard voices, but rather construes those statements
2 as simply a recitation of what plaintiff was reporting. Likewise, the Court does not
3 construe as an opinion the statement in the April 24, 2008 treatment notes to the
4 effect that plaintiff felt depressed. Moreover, the Court fails to see how either the
5 October 4, 2007 treatment notes or the April 24, 2008 treatment notes can be
6 characterized as supporting the June 5, 2007 opinion of plaintiff's treating
7 psychiatrist that plaintiff's prognosis was "guarded."

8 In support of her contention that the ALJ misrepresented the record, plaintiff
9 also has cited two reports of plaintiff's mental status generated by a treating clinician
10 (AR 249, 273) that, according to plaintiff, were rendered on September 23, 2008.
11 Contrary to plaintiff's characterization, the date on which those reports were rendered
12 was September 23, 2003.² Since the two reports were not rendered during the same
13 time frame as the treating psychiatrist's June 5, 2007 opinion, it was not a
14 misrepresentation of the record for the ALJ to state that there were no mental status
15 examinations to support the opinion. Moreover, the Court finds and concludes that
16 the ALJ did not err in failing to discuss the treating clinician's reports because they
17 predated the protective filing date of plaintiff's application for Supplemental Security
18 Income benefits by over three years, and consequently they were not probative of
19 whether plaintiff's mental impairment caused more than a minimal effect on
20 plaintiff's mental ability to perform basic work activities since January 22, 2007. See
21 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (the ALJ need
22 only discuss evidence that is significant and probative); see also Vincent v. Heckler,
23 739 F.2d 1393, 1394-95 (9th Cir. 1984) (affirming where ALJ had failed to mention
24 letter from plaintiff's treating psychiatrist concluding that plaintiff was severely
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26 ² Indeed, the Court notes that, in the Joint Stipulation filed in the prior
27 related action, Case No. EDCV 08-1106 RNB, plaintiff correctly characterized the
28 mental status report in which the treating clinician assessed plaintiff as having a GAF
score of 50 as having been rendered on September 23, 2003.

1 impaired).

2 As to Disputed Issue No. 2, the Court finds and concludes that reversal is not
3 warranted based on the ALJ's alleged failure to properly consider the type, dosage,
4 effectiveness, and side effects of plaintiff's prescribed medications. Plaintiff's
5 reliance on Social Security Ruling 96-7p is misplaced because that Social Security
6 Ruling governs credibility determinations and plaintiff here is not contesting the
7 ALJ's adverse credibility determination. Moreover, although plaintiff testified at the
8 administrative hearing to experiencing side effects (see AR 48, 56-58), medication
9 side effects must be medically documented in order to be considered. See Miller v.
10 Heckler, 770 F.2d 845, 849 (1985). Here, as the Commissioner points out (see Jt Stip
11 at 17), plaintiff's treatment notes did not evidence that she experienced any adverse
12 side effects from her medications.

13 Finally, as to Disputed Issue No. 4, for the reasons stated by the Commissioner
14 (see Jt Stip at 25-27), the Court finds and concludes that reversal is not warranted
15 based on the ALJ's failure to obtain vocational expert testimony.

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17 IT THEREFORE IS ORDERED that Judgment be entered affirming the
18 decision of the Commissioner and dismissing this action with prejudice.

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20 DATED: September 21, 2010

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23 ROBERT N. BLOCK
UNITED STATES MAGISTRATE JUDGE
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